

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AMER AL HOMSSI,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 17-cv-801
)	
DONALD TRUMP, President of the)	Judge Elaine E. Bucklo
United States; U.S. DEPARTMNT OF)	
HOMELAND SECURITY (“DHS”);)	
U.S. CUSTOMS AND BORDER)	
PROTECTIONS (“CBP”); JOHN KELLY,)	
Secretary of DHS; and KEVIN K.)	
MCALEENAN, Acting Commissioner of)	
CBP.)	
<i>Defendants.</i>)	

**PLAINTIFF’S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION, AND FOR STAY OF ENFORCEMENT
OF EXECUTIVE ORDER & REQUEST FOR MANDAMUS**

Plaintiff, **AMER AL HOMSSI**, by and through his attorneys, **THOMAS ANTHONY DURKIN, ROBIN V. WATERS**, and **BERNARD E. HARCOURT**, hereby moves pursuant to Federal Rule of Civil Procedure 65(a)-(b) for a temporary restraining order (TRO), preliminary injunction, and other equitable relief in this matter to prevent Plaintiff from the immediate loss of his medical residency in the United States resulting from cancellation of his J-1 visa, as well as the loss of his legal residency status in the United Arab Emirates (“UAE”) which is contingent upon the completion of his medication residency.

In support of this motion, Plaintiff, through counsel, shows to the Court the following:

1. On January 31, 2017, Plaintiff filed a Complaint for Declaratory and Injunctive Relief, setting forth six (6) individual causes of action challenging on statutory and constitutional

grounds the validity of President Trump's Executive Order titled "Protecting the Nation from Foreign Terrorist Entry into the United States." (Dkt. 1) The Complaint, and the facts and allegations contained therein, are incorporated fully herein by reference.

2. Plaintiff, Dr. Amer Al Homssi, is a 24-year-old citizen of Syria. Dr. Al Homssi is a resident in Internal Medicine at the University of Illinois Chicago/Advocate Christ Hospital in Oak Lawn, Illinois. Dr. Al Homssi was issued a J-1 visa, valid from August 2, 2016 – August 2, 2017, to complete his medical residency in the United States. Plaintiff was born in Syria to Syrian parents, but has lived in the UAE for most of his life; he has not visited Syria since the summer of 2010 when he was 17-years-old.

3. Plaintiff has legal residency in the United Arab Emirates. His residency, which he must renew every six months, is contingent upon his continued enrollment in his medical residency program.

4. Since August 2, 2016, Plaintiff has been domiciled in Oak Lawn, Illinois, as a medical resident in Internal Medicine, at the University of Illinois College of Medicine/Christ Advocate Hospital.

5. On January 18, 2017, Plaintiff returned to the UAE for a short trip to get married, which he did on January 23, 2017.

6. On January 29, 2017, Plaintiff attempted to return to the United States to complete his medical residency. Plaintiff was detained and searched at Abu Dhabi International Airport, and subsequently refused entry onto an Etihad Airways flight bound for Chicago O'Hare International Airport. After his detention, Plaintiff's J-1 visa was "cancelled" pursuant to President Donald Trump's EO.

7. Plaintiff is expected at work immediately, or risks losing his medical residency at the University of Illinois Chicago/Christ Advocate Hospital. If Plaintiff is prevented by Defendant Trump's EO and Defendants' enforcement of the EO from returning to the United States, he will also lose his residency status in the UAE, which would force his return to war-torn Syria.

8. District courts apply a two-step legal analysis in deciding a motion for a temporary restraining order. First, the district court determines three factors: (1) the likelihood of success on the merits; (2) the threat of irreparable harm; and, (3) the balance of equities. If those conditions are satisfied, the court must then (4) balance the hardships to the parties; and, (5) consider the impact on public interest. *Cavel Int'l Inc. v. Madigan*, 500 F.3d 544, 547 (7th Cir. 2007). And while Plaintiff can establish all of these factors, "[h]ow strong a claim on the merits is enough depends on the balance of harms: the more net harm an injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting some preliminary relief." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1133 (9th Cir. 2011) (quoting *Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009)). Thus, while Plaintiff's claims on the merits are extremely strong, temporary relief would be appropriate even if they were less clearly meritorious given how sharply the balance of harms tips in the Plaintiff's favor.

9. Plaintiff is likely to succeed on the merits. As persuasive authority, counsel hereby submit the Temporary Restraining Orders issued by federal district courts in the following cases: Case No. 1:17-cv-00480 (E.D.NY.)(Dkt. 8); Case No. 1:17-cv-10154 (D.Mass)(Dkt. 6); Case No. 1:17-cv-116 (E.D.Va); Case No 2:17-cv-00707 (C.D.Ca.)(Dkt. 5). These cases legal challenges similar to Plaintiff's legal challenges to the EO.

10. Dr. Al Homssi also suffers the threat of irreparable harm on two sufficient and independent bases. An “irreparable” harm is one that “cannot be prevented or fully rectified by the final judgment after trial.” *Roland Machine Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 386 (7th Cir. 1984). First, if Dr. Al Homssi is not permitted legal entry into the United States as a consequence of President Trump’s EO, he will lose the ability to complete his Internal Medicine residency. Second, Dr. Al Homssi will face the threat of exclusion from the UAE—and could be removable by that country to war-torn Syria.

11. As a legal matter, it is clear from the Complaint that the Executive Order violates the Establishment Clause of the First Amendment because both its purpose and effect are to favor one religion over another. “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). Thus, where a law “grant[s] a denominational preference, our precedents demand that we treat the law as suspect and that we apply strict scrutiny in adjudging its constitutionality.” *Id.* at 246. Plaintiff’s other legal claims, regarding APA process, due process, and equal protection, are equally compelling. The denial of re-entry to all visaholders from the impacted countries, without an opportunity to be heard, is a prima facie violation of those due process principles.

12. To obtain preliminary relief, Plaintiff must show that irreparable harm is likely before a decision on the merits can be issued. Plaintiff meets this test on several grounds, but most importantly because Plaintiff has shown a likelihood of success on its Establishment Clause claim, harm is presumed. See, e.g., *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006) (“[W]here a movant alleges a violation of the Establishment Clause, this is sufficient, without more, to satisfy the irreparable harm prong for purposes of the preliminary

injunction determination.”); *Parents’ Ass’n of P.S. 16 v. Quinones*, 803 F.2d 1235, 1242 (2d Cir. 1986) (applying same rule).

CONCLUSION

Dr. Al Homssi is at immediate risk of losing his medical residency and medical career and of having to return to war-torn Syria because of an Executive Order that targets Muslims in clear violation of the Establishment Clause of the Constitution—and the other constitutional and statutory provisions articulated in the Complaint. Dr. Al Homssi respectfully urges this Court to assume its constitutional role and grant a temporary restraining order providing the relief Plaintiff seeks, until such time as the Court can further consider the merits.

Respectfully submitted,

/s/ Thomas Anthony Durkin
THOMAS ANTHONY DURKIN

/s/ Robin V. Waters
ROBIN V. WATERS

/s/ Bernard E. Harcourt
BERNARD E. HARCOURT
Attorneys for Plaintiff.